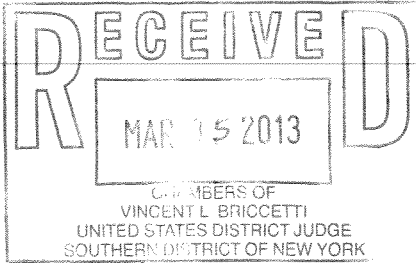


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March 15, 2013

**MEMO ENDORSED****VIA FACSIMILE**

Honorable Judge Vincent L. Briccetti  
United States District Court  
Southern District of New York  
Federal Building and US Courthouse  
300 Quarropas Street  
White Plains, New York 10601-4150

**APPLICATION DENIED****SO ORDERED** *W. J. Briccetti*VINCENT L. BRICCETTI 3/18/13  
U.S.D.J.*The Initial Conference will  
proceed as scheduled on  
3/20/13 at 10:00 a.m.*

Re: Gustavo Cardenas, et al. v. AAA Carting and Rubbish  
Removal Corp., et al.  
Civil Action No.: 12-Civ-7178

Dear Judge Briccetti:

We represent AAA Carting and Rubbish Removal, Inc., named incorrectly herein as AAA Carting and Rubbish Removal Corp ("AAA Carting"), Pasquale Cartalemi, Pasquale Cartalemi, Jr., and Angelo Cartalemi ("Defendants") in the above- referenced action pending before Your Honor. Pursuant to Fed. R. Civ. P. 16, we are presently scheduled to appear before Your Honor on March 20, 2013, for an initial case management and scheduling conference. We are writing to Your Honor at the infancy of this litigation because, for the reasons set forth below, this Court lacks subject matter jurisdiction. This threshold issue should be addressed before this action proceeds any further to avoid a waste of judicial resources, particularly given that this action is denominated as both a potential class action and collective action.

The Complaint alleges that the plaintiffs were employed by AAA Carting, and that pursuant to the Fair Labor Standards Act, 29 U.S.C. § 216 (b) ("FLSA"), and New York Labor Law § 650 *et seq.*, that they are entitled to, *inter alia*, unpaid and back wages at overtime premium pay rate. Plaintiffs allege that this Court has subject matter jurisdiction pursuant to the FLSA, 28 U.S.C. §§ 1331 and 1337, and supplemental jurisdiction over the state law claims.

However, AAA Carting is exempt from FLSA's overtime requirements under the federal motor carrier exemption, 29 U.S.C. 213(b)(1). Indeed, the U.S. Department of Labor just concluded an audit of AAA Carting, and closed its file after a finding that the motor carrier

exemption applied to AAA Carting. In light of the exemption, the FLSA claim may not be maintained, and there is no basis to assert supplemental jurisdiction over the New York labor law claims. See 28 U.S.C. § 1367 ("in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy.") Further, the NY Department of Labor applies the same exemptions as the federal government, and so the New York labor law claim must be dismissed as well. See, e.g., *Kenneth Fox et al. v. Commonwealth Worldwide Chauffeured Transportation of NY*, 865 F. Supp. 2d 257 (E.D.N.Y. 2012).

We respectfully request that in light of the foregoing, this Court adjourn the initial conference pending this Court's determination of whether it has subject matter jurisdiction over this action.

Thank you for your consideration to this matter.

Respectfully submitted,

ROBINSON BROG LEINWAND GREENE  
GENOVESE & GLUCK P.C.



By: \_\_\_\_\_  
Nicholas Caputo

CC via facsimile:

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